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ADMITTED: NEW YORK, EIGHTH CIRCUIT
SECOND CIRCUIT, ALGERIAN BAR
US COURT ON INTERNATIONAL TRADE

July 27, 2023

VIA ECF

The Honorable George B. Daniels
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *In Re: Terrorist Attacks on September 11, 2001, 03 MDL 1570 (GBD) (SN)*

Dear Judge Daniels:

Defendants¹ write to request permission to file a 3 page sur-reply to Plaintiffs' Reply to Defendants' Response [ECF No. 9179] to Plaintiffs' Objections [ECF No. 9110] to the Court's April 27, 2023, Opinion and Order [ECF No. 9060], [ECF No. 9228]. The proposed sur-reply accompanies this letter. Defendants make this request for two reasons.

First, having reviewed Plaintiffs' Reply, Defendants accept and take full responsibility for misquoting Plaintiffs' witness Jonathan Winer. [ECF No. 9179]. As shown in the proposed declaration of Mustapha Ndanusa, it was an honest mistake. The misquote notwithstanding, Defendants have accurately presented Winer's testimony, and the error did not change the meaning of the full quote. Plaintiffs are incorrect in their assertion that the quotation error is an "egregious," "blatant" "misrepresentation" "(to an alarming degree)" that presents Winer's testimony as "the opposite" of what it is. [ECF No. 9228 at 2, 3, 4].

Second, Plaintiffs also indirectly allege that Defendants have tried "to deceive the Court." [ECF No. 9228 at 4, n.4]. This is not the case.

¹ "Defendants" means World Assembly of Muslim Youth and World Assembly of Muslim Youth International, International Islamic Relief Organization, Muslim World League, the four "Charity Officer Defendants" (Abdullah Omar Naseef, Abdullah bin Saleh al Obaid, Abdullah Mohsen al Turki, and Adnan Basha), and Yassin Kadi.

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For the foregoing reasons, Defendants respectfully request permission to file the accompanying sur-reply to explain how the mistake in the quote was made and why it does not change the meaning of Winer's claims, and to respond to Plaintiffs' allegations.

Respectfully submitted

/s/ Omar Mohammedi

Omar Mohammedi, Esq

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001	03-MD-01570 (GBD)(SN) ECF Case
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This document relates to:

Kathleen Ashton, et al. v. Al Qaeda Islamic Army, et al., 02-cv-06977
Gladys H. Salvo, et al. v. Al Qaeda Islamic Army, et al., 03-cv-05071
Federal Insurance Co., et al. v. Al Qaida, et al., 03-cv-06978
Thomas E. Burnett, Sr., et al. v. Al Baraka Inv. & Dev. Corp., et al., 03-cv-09849
Estate of John P. O'Neill, Sr., et al. v. Al Baraka Inv. & Dev. Corp., et al., 04-cv-01923
Continental Casualty Co., et al. v. Al Qaeda, et al., 04-cv-05970
Cantor Fitzgerald & Co., et al. v. Akida Bank Private Ltd., et al., 04-cv-07065
Euro Brokers Inc., et al. v. Al Baraka Inv. & Dev. Corp., et al., 04-cv-07279
Maher, et al. v. Islamic Emirate of Afghanistan a/k/a The Taliban, et al., 1:23-cv-02845

**DEFENDANTS¹ SUR-REPLY TO PLAINTIFFS' REPLY TO
DEFENDANTS' RESPONSE TO PLAINTIFFS' OBJECTIONS TO THE
COURT'S APRIL 27, 2023 OPINION AND ORDER**

¹ "Defendants" means World Assembly of Muslim Youth and World Assembly of Muslim Youth International, International Islamic Relief Organization, Muslim World League, the four "Charity Officer Defendants" (Abdullah Omar Naseef, Abdullah bin Saleh al Obaid, Abdullah Mohsen al Turki, and Adnan Basha), and Yassin Kadi.

In their opposition to Plaintiffs' Objections to Magistrate Judge Netburn's April 27, 2023 *Daubert* ruling, Defendants maintained that Judge Netburn correctly ruled that Plaintiffs' expert Jonathan Winer was not qualified to provide expert opinions on religious issues.² Plaintiffs' core argument in reply is that "Defendants egregiously misrepresent the testimony of Winer, who explained his expertise."³ Plaintiffs assert that Defendants' "argument is built on a blatant misrepresentation of [Winer's] testimony, as Winer testified essentially to the opposite of what Defendants claim."⁴ Plaintiffs accuse Defendants' counsel of engaging in "deception" and "trying to deceive the Court"⁵

Plaintiffs are wrong. Defendants acknowledge that they misquoted Winer.⁶ It was an honest mistake.⁷ The error, however, did not misrepresent Winer's claimed qualifications to testify on religious issues. Far from changing a "no" to a "yes," as Plaintiffs assert,⁸ even with that error Defendants fairly presented Winer's testimony that he had "expertise" in the area of the "combination of foreign policy, security, and religion," an area where he claims to have "devoted some extensive work over a long period of time."⁹

Comparing the quotation with the testimony demonstrates Defendants' point. In Defendants' responsive brief to Plaintiffs' Rule 72 objections, Defendants wrote:

When asked "are you an expert in Islam," Winer fashions his own expertise with the response:

I'm **not an expert on the doc...religious doctrine** to the extent it involves the political impact of different types of interpretations of religion when a religion is politicized into a political movement, where I have expertise. So when you have a combination of foreign policy, security, and religion, that's an area that I have devoted some extensive work on over a long period of time. And that is an area of expertise, yes.¹⁰

² Defendants' Opposition is at ECF 9179.

³ ECF No. 9228 ("Reply") at 2.

⁴ *Id.* at 2-3.

⁵ *Id.* at 4, n. 4.

⁶ Letter from Omar Mohammedi to this Court (July 27, 2023); *see* ECF No. 9179 at 4.

⁷ See Declaration of Mustapha Ndanus (July 27, 2023).

⁸ Reply at 3.

⁹ ECF No. 9179 at 4.

¹⁰ ECF No. 9179 at 4.

The deposition transcript reads:

I'm not an expert on the doc...religious doctrine **of any kind, except** to the extent it involves the political impact of different types of interpretations of religion when a religion is politicized into a political movement, where I have expertise. So when you have a combination of foreign policy, security, and religion, that's an area that I have devoted some extensive work on over a long period of time. And that is an area of expertise, yes.¹¹

While Defendants acknowledge they erred in leaving out the words “of any kind, except,” the remainder of the quote gives the meaning Winer articulated at his deposition and Plaintiffs emphasize in arguing that Winer is qualified to opine on Islamic doctrines and principles.¹² Defendants fairly presented Winer’s claimed “political Islam”¹³ “lane of expertise”¹⁴ throughout their opposition.¹⁵ Moreover, Plaintiff presented the correct quote in their opposition brief to Defendants’ moving brief before Judge Netburn.¹⁶ Judge Netburn grappled with these same arguments and concluded that Winer was not qualified to opine on Islamic principles and doctrines such as “Wahhabism” and “Salafism.”¹⁷

In this context, it is clear that Defendants did not misrepresent Winer’s claimed expertise in “political Islam.” Contrary to Plaintiffs’ assertion, the misquoted text does not change the meaning of Winer’s testimony or the import of Defendants’ arguments from a claim that he has expertise in political Islam to a claim that he does not.

Given that Defendants fairly described Winer’s claimed “lane of expertise,” Plaintiffs’ inflammatory pejoratives that Defendants “egregiously misrepresented” facts¹⁸ or were deceptive¹⁹ in

¹¹ Winer Dep. Tr. at 74:5-15 (ECF 9180-7).

¹² ECF No. 9228 at p. 1.

¹³ ECF No. 9110 at 7, 9; *see id.* at 6-9.

¹⁴ ECF No. 9228 at 1 (noting Winer’s claimed expertise in political Islam), 7 (same);

¹⁵ ECF 9179 at 4 (noting Winer’s alleged expertise in political Islam), 5-6 (noting Winer’s alleged expertise in Islam based on his work experience and use of Islamic terms), 7 (averring that Plaintiffs claim that Winer seeks to testify about the “political impact of different types of interpretations of religion when a religion is politicized into a political movement,” did not suffice to qualify him to speak about Wahhabism and Salafism).

¹⁶ Notably, Plaintiffs presented the full disputed quote now at issue to Judge Netburn. (ECF No. 7606 at 8).

¹⁷ ECF No. 9060 at pp. 16-18. (“[Winer] has no expertise in religion, so his opinions on ‘Salafism’ and ‘Wahhabism’ are excluded.”).

¹⁸ ECF No. 9228 at 2-4.

¹⁹ ECF No. 9228 at 4, fn 4

presenting them, seek to shift the focus away from Judge Netburn's Order and Plaintiffs' inadequate legal objections thereto. Counsel did not deceive the Court; the mistaken quotation of Winer's testimony and the remainder of the opposition still accurately represent Winer's "expertise" on religious issues.

Respectfully submitted,
By: /s/ Omar Mohammedi

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Maher, et al. v. Islamic Emirate of Afghanistan a/k/a The Taliban, et al., 1:23-cv-02845

**DECLARATION OF MUSTAPHA NDANUSA TO DEFENDANTS¹ SUR-
REPLY TO PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO
PLAINTIFFS' OBJECTIONS TO THE COURT'S APRIL 27, 2023
OPINION AND ORDER**

I, Mustapha Ndanusa, pursuant to 28 U.S.C. §1746, states as follows:

1. I am an attorney admitted to practice in this court and associated with the Law Firm of Omar T. Mohammedi LLC or OTM Law.
2. I assisted in drafting Defendants' opposition (ECF No. 9179) to Plaintiffs' Rule 72 Objections to the April 27, 2023 Opinion and Order (ECF No. 9060).
3. In drafting the opposition, I intended to show that Jonathan Winer's deposition testimony

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that he possessed expertise in “political Islam” did not qualify him to opine on Islam.

4. To do so, I referred to his testimony at Winer Dep. Tr. at 74:5-15 (ECF No. 9180-7) as well as other areas where he references expertise in the intersection between Islam and politics.

5. Unfortunately, I mistakenly misquoted portions of the transcript at 74:5-15.

6. It was never my intention to mislead the court into believing Winer intended something other than his claim to expertise in political Islam. The paragraphs I helped draft on this point, where we analyze Winer’s expertise claims, speak to this.

I declare, under penalty of perjury that the foregoing is true and correct.

New York, New York, July 27, 2023

/s/ Mustapha Ndanusa

Mustapha Ndanusa, Esq.